



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2004

Mr. James M. Frazier, III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2004-6251

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205984.

The Texas Department of Criminal Justice ("TDCJ") received a request from a former TDCJ employee for any information pertaining to her employment with TDCJ. You assert that the submitted information is excepted from disclosure under sections 552.117 and 552.134 of the Government Code. We have reviewed the information you submitted and have considered the exceptions you claim.

Initially, we note that section 552.022 of the Government Code makes a portion of the submitted information expressly public. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

After reviewing the submitted documents, we find that the portion of the submitted information you seek to withhold under section 552.134 consists of a completed investigation conducted by TDCJ's Internal Affairs Division. Thus, as this information pertains to a completed investigation, TDCJ may withhold this information only to the extent other law makes the information confidential or the information is protected by section 552.108 of the Government Code. Sections 552.117 and 552.134 of the Government Code qualify as "other law" that makes information confidential; therefore, we will consider your arguments under these exceptions for the information subject to section 552.022 as well as for the remaining information.

Section 552.134(a) of the Government Code provides the following:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

....

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

You assert that the information at issue concerns an inmate confined in a TDCJ facility. Our review of the documents confirms that much of the submitted information pertains to an inmate confined in a TDCJ facility. However, some of the information does not concern a TDCJ inmate, but rather a former TDCJ employee. Accordingly, while TDCJ must withhold under section 552.134 most of the submitted information it seeks to withhold under this exception, it must release those documents, which we have marked, that do not concern a TDCJ inmate.

Additionally, you argue that a portion of the submitted information is subject to section 552.117(a)(3) of the Government Code, which excepts the home address and telephone number, social security number, and family member information of a current or former TDCJ employee. We note, however, that the information to which you refer relates

to the requestor. In accordance with section 552.023 of the Government Code, the requestor has a special right of access to personal information that would be excepted from public disclosure under provisions designed to protect her privacy. *See* Gov't Code § 552.023. Therefore, information about the requestor that is subject to section 552.117 must be released to her.¹ We note that section 552.222 provides that a government body may make inquiry to the requestor to establish proper identification. Gov't Code § 552.222(a).

In summary, with the exception of the information we have marked, TDCJ must withhold under section 552.134 of the Government Code the submitted information it seeks to withhold under this exception. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹Because this information is confidential with respect to the general public, if TDCJ receives a future request for this information from an individual other than the requestor or her authorized representative, TDCJ should again seek our decision.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 205984

Enc: Submitted documents

c: Ms. Alicia Mottley
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(w/o enclosures)